No. 75-1261

In the Supreme Court of the United States

OCTOBER TERM, 1976

EARL L. BUTZ, SECRETARY OF AGRICULTURE, APPELLANT

v.

KAREN HEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF FOR THE APPELLANT

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OPINION BELOW

The opinion of the three-judge district court (J.S. App. A, pp. 1a–23a) is reported at 402 F. Supp. 398.

JURISDICTION

The order of the three-judge district court enjoining the Commissioner of the Iowa State Department of Social Services from enforcing its statewide regulation disallowing any deduction for educational or training transportation expenses, for purposes of computing the income of food stamp recipients, and enjoining the Secretary of Agriculture from enforcing

the analogous provision of 7 C.F.R. 271.3(c)(1)(iii)(*f*) on the grounds that those regulations conflict with the Food Stamp Act and deny due process and equal protection, was entered on October 10, 1975. A notice of appeal to this Court (J.S. App. C, pp. 26a–27a) was filed on November 7, 1975.[1] On December 30, 1975, Mr. Justice Blackmun extended the time for docketing the appeal to and including February 5, 1976, and on January 27, 1976, he further extended the time to and including March 6, 1976. The appeal was docketed on March 5, 1976. On June 1, 1976, this Court noted probable jurisdiction and ordered that this case be consolidated with *Burns* v. *Hein,* No. 75–1355, in which probable jurisdiction also was noted on that date.

The jurisdiction of this Court is conferred by 28 U.S.C. 1253, which authorizes a direct appeal by any party from an order granting an injunction in any civil action required to be heard by a three-judge district court. A three-judge district court was required in this case, which was brought by appellees to enjoin, on constitutional grounds, the Commissioner of the Iowa State Department of Social Services from enforcing an Iowa administrative regulation having statewide effect. 28 U.S.C. 2281; *Board of Regents* v. *New Left Education Project,* 404 U.S. 541, 542. Appellees moved to join the Secretary as a party defendant because the applicable federal regulations, which

[1] The Secretary also filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit. On motion of the Secretary, that court on January 7, 1976, stayed all proceedings pending further order.

are binding on the states, contain a provision similar to the Iowa regulation. The district court ordered joinder pursuant to Rule 19(a)(1), Fed. R. Civ. P., and asserted subject matter jurisdiction over the claims against the Secretary under 28 U.S.C. 1337. Cf. *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 725–726; *Rosado* v. *Wyman,* 397 U.S. 397, 402–405; *Moor* v. *County of Alameda,* 411 U.S. 693, 713 and n. 29. Accordingly, this Court has jurdisction over the Secretary's appeal. See, *e.g., Sterling* v. *Constantin,* 287 U.S. 378, 393–394.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Food Stamp Act of 1964, 78 Stat. 703 *et seq.,* as amended, 7 U.S.C. (and Supp. V) 2011 *et seq.,* and regulations promulgated thereunder are set forth in the Appendix, *infra,* pp. 1A to 8A.

QUESTION PRESENTED

Whether regulations that include training allowances in income, while disallowing an itemized deduction for incidental training expenses, for purposes of determining eligibility for participation in and amount of benefit under the food stamp program, conflict with the Food Stamp Act or deny equal protection or due process.

STATEMENT

1. The Food Stamp Act of 1964, 78 Stat. 703 *et seq.,* as amended, 7 U.S.C. (and Supp. V) 2011 *et seq.,* authorizes the Secretary of Agriculture to administer a food stamp program under which low-income house-

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holds may purchase allotments of coupons that can be exchanged for food at approved retail stores. The face value of a coupon allotment is set at a level intended to enable the household to obtain a nutritionally adequate diet, as determined by the Secretary. 7 U.S.C. (Supp. V) 2016(a). An eligible household pays less than face value for its allotment of coupons. 7 U.S.C. 2013(a).[2]

The size of the discount allowed to the purchasing household depends principally upon the household's income. The Secretary is authorized to "prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility" for participation in the program (7 U.S.C. (Supp. V) 2014(b)), and to establish standards for determining the amount eligible households must pay for their coupons (the purchase requirement), which "shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income." 7 U.S.C. 2016(b).

The Secretary is further authorized to promulgate regulations "not inconsistent with [the Act], as he deems necessary or appropriate for the effective and efficient administration of the food stamp program." 7 U.S.C. 2013(c). Pursuant to this authority, the Sec-

[2] The federal government redeems the coupons at their face value, thereby absorbing the difference between the face value and the price the household paid for the coupons. 7 U.S.C. 2013(a) and 2018; see 7 C.F.R. 272.4 and 272.5.

retary has promulgated regulations defining "income" for purposes of determining a household's eligibility and computing its purchase requirement. With some exceptions, "income" generally includes all monies received. 7 C.F.R. 271.3(c)(1)(i). In particular, the Secretary has determined that payments received by a household from federal assistance programs are to be treated as income; his regulations specifically provide that "income" includes "[p]ayments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need [and] [p]ayments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program." 7 C.F.R. 271.3(c)(1)(i)(*f*) and (*g*).

The Secretary's regulations further provided that certain expenses are allowable as deductions from income. 7 C.F.R. 271.3(c)(1)(iii).[3] In particular, the regulations allow an itemized deduction for "[t]uition and mandatory fees assessed by educational institutions" (7 C.F.R. 271.3(c)(1)(iii)(*f*)), and a standardized monthly deduction of 10 percent of any training allowance, or $30, whichever is less, to cover all inci-

[3] These regulations have been amended. Instead of itemized deductions for certain expenses, including education, the new regulations provide for a standardized deduction for all households. 41 Fed. Reg. 18788 (1976). However, the Secretary has been preliminarily enjoined from enforcing these regulations. *Trump* v. *Butz*, No. 76–0933, order entered June 18, 1976 (D.D.C.).

dental expenses, such as books, school supplies, meals at school, and transportation. 7 C.F.R. 271.3(c)(1)(iii)(*a*).[4]

Each participating state is charged with the responsibility of certifying eligibility and computing purchase requirements under the standards set forth in the Secretary's regulations. 7 U.S.C. (and Supp. V) 2019 (b) and (e).

2. Appellee Karen Hein is the head of a household that is eligible for assistance under the Food Stamp Act (Jt. App. 23).[5] Prior to September 1972, she was paying $46 for $92 worth of coupons (Jt. App. 24), the maximum allotment then available to her household. In that month, appellee was granted assistance under the State of Iowa's Individual Education and Training Plan for training as a registered nurse (*ibid.*). The plan was federally aided pursuant to Title IV of the Social Security Act, 49 Stat. 620, 627, as amended, 42 U.S.C. 601 *et seq.* (see 34 Fed. Reg. 1354, 1359–1360 (1969)).[6] The assistance to appellee in-

[4] The standardized percentage deduction is computed on the basis of the total training allowance, including any separate allowance for incidental expenses such as transportation. Thus, if, for example, an eligible individual receives a monthly tuition allowance of $200 and a separate monthly allowance for incidental expenses of $44, his monthly standardized deduction would be $24.40. In addition, the full $200 tuition payment would also be deductible.

[5] "Jt. App." refers to the joint appendix filed in this case and *Burns* v. *Hein*, No. 75–1355.

[6] Programs of this nature currently are authorized by Title XX of the Social Security Act, 42 U.S.C. (Supp. IV) 1397 *et seq.*

cluded payment of her tuition at Saint Luke's School of Nursing in Davenport, Iowa, and a monthly allowance of $44 to cover transportation expenses incurred in connection with attending the school (Jt. App. 24).

The monthly allowance of $44 was included in appellee's income for the purpose of determining her household's purchase requirement (*ibid.*).[7] She was not allowed a fully offsetting deduction for her transportation expenses.[8] Accordingly, her income, and consequently the amount she was required to pay for her monthly allotment of coupons, increased as a result of the receipt of the monthly allowance (*ibid.*).

After exhausting state administrative remedies, appellee commenced this action in the United States District Court for the Southern District of Iowa, on behalf of herself and others similarly situated, seeking to enjoin state officials from including the monthly allowance in her income for food stamp purposes (Jt. App. 15–22). Appellee contended that the state regulations requiring such inclusion, and denying a fully offsetting deduction for travel costs, were incon-

[7] It does not appear from the record whether the monthly *pro rata* share of the tuition payments made on appellee's behalf also was included in her income, as required by 7 C.F.R. 271.3(c)(1)(i)(*g*). Appellee would, in any event, have been entitled to an offsetting deduction for the amount of tuition paid. See pages 5–6 and note 4, *supra*.

[8] The record is silent both as to appellee's actual transportation expenses and as to whether appellee received the standardized deduction for incidental expenses to which she became entitled under 7 C.F.R. 271.3(c)(1)(iii)(*a*). See note 4, *supra*.

sistent with the Food Stamp Act and denied her equal protection and due process (Jt. App. 19–20).[*]

The three-judge district court, convened pursuant to 28 U.S.C. 2281, held that the state regulation disallowing an itemized deduction for travel and other miscellaneous training expenses was inconsistent with the then applicable federal regulation, which allowed a deduction generally for "[e]ducational expenses which are for tuition and mandatory school fees * * *." 7 C.F.R. 271.3(c)(1)(iii)(*e*) (1973 rev.). The district court enjoined the state defendants from further enforcement of the state regulation disallowing an itemized deduction for such travel expenses. *Hein* v. *Burns*, 371 F. Supp. 1091 (Jt. App. 31–42). This Court vacated that judgment and remanded for reconsideration of the case in light of the Secretary's intervening promulgation of 7 C.F.R. 271.3(c)(1)(iii)(*f*), which amended the prior regulation specifically to exclude incidental training expenses, such as transportation costs, from the educational or training expenses that may be itemized and deducted in computing a household's net income. 419 U.S. 989 (Jt. App. 43).

On remand, the district court granted appellee's

[*] The suit was brought prior to the promulgation of the Secretary's regulations at issue here. At that time, however, Iowa State Department of Social Services Manual, Section VII, ch. 3, p. 13, Item *j*, required inclusion of travel allowances in income, and Section VII, ch. 3, p. 16, Item *d*, of the Manual further provided:

"Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible."

motion (Jt. App. 44–45) to join the Secretary as a party defendant. The court held invalid both the state and the amended federal regulations that denied a deduction for transportation and other miscellaneous educational expenses. The court reasoned that since "[c]ommuting expenses * * * reduce the level of actually available income" (402 F. Supp. at 405; J.S. App. A, p. 15a), "disallowance of the plaintiff's transportation allowance as a deduction, is a regulatory interpretation inconsistent with * * * the remedial purposes of the act" (*ibid.*). The court further determined that those regulations deny equal protection by arbitrarily distinguishing "between those food stamp recipients who receive * * * travel allowances, and those who do not, even though both classes are similarly situated in terms of disposable income and purchasing power" (402 F. Supp. at 406; J.S. App. A, p. 16a), and that the regulations also deny due process because they rest upon a conclusive presumption that provides "no safeguards for individual consideration of what effect the travel allowance actually has on an individual's ability to purchase a nutritionally adequate diet" (402 F. Supp. at 407; J.S. App. A, p. 20a).

The court enjoined the state and federal defendants "from including in the monthly net income of any person * * * any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such per-

son's monthly net income in determining * * * adjusted net income" (402 F. Supp. at 408; J. S. App. A, p. 22a). The court also ordered the state and federal defendants to "make a forward adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past" (402 F. Supp. at 408; J. S. App. A, pp. 22a–23a).[10]

SUMMARY OF ARGUMENT

A.1. The inclusion of training allowances in income for the purpose of determining eligibility for and extent of entitlement to food stamp benefits is proper. Congress understood and intended that federal assistance payments generally would be included in the calculation of income under the Food Stamp Act. Receipt of such payments enhances a household's comparative economic position and thereby reduces the household's relative need for further assistance in the form of food stamps.

Training allowances are like other assistance payments in this respect. Such allowances are paid without regard to the recipient's actual incidental training expenses. To the extent that the allowance is not needed for such expenses, or is used to cover expenses that the household previously had been incurring without assistance, the allowance adds directly to the

[10] Accordingly, this case will not become moot if the amended regulations (note 3, *supra*) are put into effect.

amount of household funds available for normal expenses, such as food. Even if the allowance is used entirely to defray a new incidental training expense, the household is better off, by the amount of the allowance, than other households which incur similar expenses without the benefit of an allowance.

2. The disallowance of an itemized deduction for incidental training expenses also is reasonable. As a general matter, Congress did not intend that all nonfood expenditures be deductible; to the contrary, Congress intended that "income" under the Act would include funds needed by the household to meet nonfood expenses. Moreover, the Secretary has found that allowance of itemized deductions for nonfood expenditures tends to favor households with higher incomes, since such households are able to spend more on nonfood items.

Furthermore, actual training commutation costs, the type of expense incurred by appellee, vary widely among households. The variance to a large extent derives from personal consumption choices, such as the method of transportation utilized, and such choices should not be permitted to affect eligibility determinations under the Act.

The disallowance of an itemized deduction for training transportation expenses is not inconsistent with the allowance of such a deduction for tuition and other mandatory educational fees, nor is it inconsistent with any purpose in the Act to support education. Unlike transportation expenses, tuition is a large, fixed cost that has no counterpart in the budgets of

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the normal household, and the allowance of an itemized deduction for such an expense is therefore appropriate. The Secretary does allow a standardized deduction, and that deduction gives sufficient encouragement to those ~~purchasing~~ pursuing training or employment.

B. The Secretary's regulations comply with the requirements of equal protection and due process. By reflecting the real difference in need levels between households whose training expenses are defrayed by an allowance and those whose training expenses are not so defrayed, the Secretary's regulations conform more closely to the ideal of equal protection than does the district court's solution, which fails to account for this distinction. The disallowance of an itemized deduction for training transportation expenses also achieves equity by placing households incurring such expenses in the same position as households incurring identical expenses in connection with work. The Secretary has properly rejected as inconsistent with the Act the alternative of allowing a deduction for all transportation expenses, or more broadly, for all non-food expenditures. Instead, by minimizing the number of available deductions, and by applying the regulations evenly, the Secretary has achieved an equitable and economically sound allocation of food stamp benefits.

Nothing more than that is required by the Due Process Clause. Regulations which effect the distribution of welfare benefits need not conform to a standard of universal truth. Due process, an essentially pragmatic concept of governance, is afforded by regu-

latory classifications which, although not mathematically precise, reasonably approximate that which would be achieved by individual adjudication. Food stamp benefits, like many other forms of assistance, are appropriately and constitutionally allocated on the basis of income. The regulations at issue here reasonably define income and therefore give effect to the legislative choice in a constitutionally permissible manner.

ARGUMENT

REGULATIONS THAT INCLUDE TRAINING ALLOWANCES IN INCOME, WHILE DISALLOWING AN ITEMIZED DEDUCTION FOR INCIDENTAL TRAINING EXPENSES, FOR PURPOSES OF DETERMINING ELIGIBILITY FOR PARTICIPATION IN AND AMOUNT OF BENEFITS UNDER THE FOOD STAMP PROGRAM, DO NOT CONFLICT WITH THE FOOD STAMP ACT OR DENY EQUAL PROTECTION OR DUE PROCESS

The district court's analysis in this case rested upon two fundamental misconceptions. The first of these concerned the nature of the allowance received by the appellees. The court understood the allowance to constitute a reimbursement of actual travel expenses. This view of the allowance underpinned the court's analysis of each aspect of the case. The court's conclusion that the Secretary's regulations are inconsistent with the remedial purposes of the Food Stamp Act was based upon the reasoning that since "the travel allowance is spent entirely to defray commuting expenses * * *, receipt of such allowance has no effect on food purchasing power" (402 F. Supp. at 405; J.S. App. A,

p. 13a). Similarly, the court's holding that the regulations deny equal protection was premised upon the assumption that "[t]he travel allowance in question * * * [is] utilized entirely to defray commuting expenses" (402 F. Supp. at 406; J.S. App. A, p. 17a), and therefore that "those food stamp recipients who receive such travel allowances and those who do not * * * are similarly situated in terms of disposable income and purchasing power" (402 F. Supp. at 406; J.S. App. A, p. 16a). And with regard to due process, the court stated that "since the amount of the travel allowance must [be], and is, spent entirely to defray the costs of commuting, [the] presumption [that receipt of the allowance reduces need] is contrary to fact" (402 F. Supp. at 407; J.S. App. A, p. 20a).

The court's understanding of the nature of the allowance, an understanding that so pervasively determined its decision in this case, was incorrect. The training allowance in question was paid pursuant to a state regulation that directed that "[a] work and training allowance of forty-four [now sixty] dollars per month shall be provided to a person participating in a full-time training plan" (Appellant's Br. in No. 75–1355, App. D, p. 6a). Although the allowance is made available to cover the incidental expenses, such as travel costs, incurred in connection with participation in a training program, the regulation does not specify to what end the money need be spent. Recipients are free to use the allowance as they please;

they are not required to submit an accounting of expenses. Indeed, recipients are entitled to the full amount of the allowance whether or not they actually incur any commuting or other incidental training expenses. See also Appellant's Br. in No. 75–1355, at 7.

In short, the basic factual assumption upon which the district court's decision rested was false. The training allowance need not be spent entirely to defray commuting or other incidental training expenses. To the extent that the allowance exceeds those expenses in any individual case, it directly enhances the recipient's disposable income. Since the district court's analysis, in all respects, is rooted in the premise that the allowance would never increase the recipient's disposable income, that analysis cannot support the judgment below.[11]

A second fundamental misconception is evident in the district court's repeated insistence on the primary importance of the impact of incidental education ex-

[11] Moreover, implicit throughout the court's analysis is the further assumption that an individual who does not receive a training allowance will not incur any expenses similar to those the allowance is intended to cover. Such an assumption is the only evident basis for the court's assertion that "those food stamp recipients who receive * * * travel allowances and those who do not * * * are similarly situated in terms of disposable income * * *" (402 F. Supp. at 406; J.S. App. A, p. 16a). But the assumption is without any apparent factual support. Food stamp recipients not covered by Iowa's education and training program may nevertheless incur incidental training expenses. Between two otherwise similarly situated individuals with the same expenses, the one who receives a training allowance quite obviously is better off than the one who does not.

penses on "food purchasing power." In essence, the district court's rationale for invalidating the Secretary's disallowance of an itemized deduction for such expenses was that amounts expended on nonfood items, such as travel, decrease "food purchasing power" and therefore must be deducted from the household's income for purposes of computing food stamp benefits. See 402 F. Supp. at 404–405; J.S. App. A, pp. 11a–15a. In so reasoning, the court mistook the statutory eligibility criterion to be "food purchasing power," whereas in fact it is "income."

In enacting the Food Stamp Act, Congress intended to "raise levels of nutrition among low-income households." 7 U.S.C. 2011. Congress authorized the Secretary to "prescribe the amounts of household income * * * to be used as criteria of eligibility." 7 U.S.C. (Supp. V) 2014(b). The choice of "income," rather than of a more elusive concept such as "food purchasing power," as the basic eligibility criterion is both understandable and appropriate. The awkwardness of the latter as an eligibility criterion becomes apparent from even brief consideration of the implications of the district court's reasoning. That reasoning, if applied generally, would appear to require the Secretary to allow a deduction from gross income for all nonfood expenses, or at least all such expenses that a reviewing court would subsequently deem either necessary or socially desirable, in order to arrive at a net figure representing "food purchasing power." But such an accounting determination would necessitate a close, detailed analysis of

individual household budgets and presumably would entail complicated reporting and certification requirements. Such a procedure would be seriously burdensome on the Secretary and households alike. Moreover, Congress presumably realized that to permit households to exclude from the Secretary's consideration amounts spent on nonfood items would create a serious risk that the food stamp program would be abused. An evaluation of need based only on the amount of unexpended funds remaining available for the purchase of food—"food purchasing power," as the term was used by the district court—might make it possible for households with incomes sufficiently high to justify their exclusion from the program to obtain food stamp assistance on the basis of heavy, discretionary, nonfood expenditures. Accordingly, to the extent that the district court's decision rests upon the primacy of "food purchasing power," rather than of income, in the statutory scheme, that decision cannot stand.

With these considerations in mind, we turn now to the specific issues presented by this case—whether the Secretary's regulations are reasonable under the Act and satisfy the requirements of equal protection and due process.

A. THE SECRETARY'S REGULATIONS ARE CONSISTENT WITH THE FOOD STAMP ACT

Congress intended that the operative definition of "income" be established by the Secretary, who is authorized to "issue such regulations, not inconsistent

with [the Act], as he deems necessary or appropriate for the effective and efficient administration of the food stamp program." 7 U.S.C. 2013(c). Congress therefore has given the Secretary wide latitude to exercise his judgment in determining what regulatory definition of "income" is "appropriate" for the "effective and efficient administration of the * * * program." [12]

Regulations promulgated under a statute by one charged with its administration are entitled to great weight. See, *e.g., Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 87. This is especially true where, as here, the statute explicitly grants the administrator broad discretion. In *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 369, for example, this Court stated:

> Where the empowering provision of a statute states simply that the agency may "make . . . such rules and regulations as may be necessary to carry out the provisions of this Act," we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is "reasonably related to the purposes of the enabling legislation." [Footnote omitted.]

Indeed, in such cases the "construction of a statute by

[12] Congress has consistently recognized that the Food Stamp Act grants the Secretary broad discretion in the formulation of standards and guidelines. See, *e.g.*, 110 Cong. Rec. 7139 (1964) (remarks of Rep. Hutchinson); 110 Cong. Rec. 7153 (1964) (remarks of Rep. Hoeven); 116 Cong. Rec. 42003 (1970) (remarks of Rep. Foley); 115 Cong. Rec. 26737 (1969) (remarks of Sen. Ellender).

those charged with its execution should be followed unless there are compelling indications that it is wrong." *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367, 381, quoted with approval in *New York Dept. of Social Services* v. *Dublino,* 413 U.S. 405, 421. See also *Udall* v. *Tallman,* 380 U.S. 1, 16–18. Under this standard, as we now show, the Secretary's regulations at issue are plainly valid.

1. The inclusion in income of payments received from public assistance programs is reasonable

a. The Secretary's general inclusion in income of federal assistance payments is proper. Such assistance enlarges the amount of financial resources generally available to the household and is appropriately taken into consideration in determining the household's need for further assistance in the form of food stamps.

In this case, for example, appellee Karen Hein was receiving $220 per month under the federal program of aid to families with dependent children (Jt. App. 25). Under 7 C.F.R. 271.3(c)(1)(i)(*f*), these payments are included in her income for the purpose of evaluating her need for food stamp assistance. This is an entirely reasonable result. Appellee is better off, by the amount of the AFDC payment, than one who is otherwise in the same economic position but who is not receiving such assistance, and, consequently, she has relatively less need for further assistance.

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Appellee's position is comparable to one who receives $220 per month in wages. As explained by a Department of Agriculture official in testimony before the House Committee on Agriculture prior to enactment of the Act, it was intended that families receiving income from public assistance would be treated in the same manner as families whose income derived from other sources:

> Take two families of four, one is receiving aid to dependent children assistance—they get an ADC check for $100 a month. Another family over here is receiving no public assistance of any sort. The man is working 2 days a week. He has an income of $100 a month from his job. Both of these families of four would have $100 income. Therefore, both would pay the same amount for their coupons and get the same bonus. It is based on income and not the source of the income.

Hearings on H.R. 5733 (Food Stamp Plan) before the House Committee on Agriculture, 88th Cong., 1st Sess. 86–87 (1963).

More than 90 percent of food stamp recipients also receive some other form of federal aid. Food and Nutrition Service, Department of Agriculture, *Food Stamp Program, A Report in Accordance With Senate Resolution 58, for the Senate Committee on Agriculture and Forestry*, 94th Cong., 1st Sess. 12 (Committee Print, 1975) (hereinafter cited as *Resolution 58 Report*).[12] Nothing in the Act requires the

[12] Approximately 30 percent of food stamp recipients receive assistance from three or more other federal programs. *Ibid.*

Secretary to ignore this fact. On the contrary, Congress understood and expected that federal assistance payments would be included in household income for the purpose of determining eligibility and benefits under the Act. For example, in explaining the effect of a proposed amendment to the Act, the Senate Committee on Agriculture and Forestry stated (S. Rep. No. 91-292, 91st Cong., 1st Sess. 10 (1969) (emphasis added)):

> No household would be required to pay more than 30 percent of its income (including welfare payments, of course, since *for all purposes under the act the term "income" includes welfare payments*).

Thus, the Food Stamp Act establishes an income maintenance program that supplements household income only after other forms of assistance have been taken into account. Congress has chosen to exempt certain kinds of public assistance from being included in the beneficiary's income for the purpose of allocating food stamp benefits. See, *e.g.*, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1902, 42 U.S.C. 4636; 7 C.F.R. 271.3(c)(1)(ii). Absent such a specific legislative exemption, however, payments received from public assistance are properly included in the income figure used by the Secretary in administering the food stamp program.

b. In addition to a monthly AFDC payment, appellee Hein also received assistance under the State of Iowa's Individual Education and Training Plan for

the expenses of training as a registered nurse. The assistance covered certain specified expenses, such as tuition, and also included a $44 monthly allowance. So long as she remained in the training program, appellee was free to spend that allowance as she saw fit. See pages 14–15, *supra*. Like the AFDC payments, the $44 monthly allowance was "income" to appellee in every meaningful sense of the word. Such an allowance improves the lot of those who receive it relative to those who do not, and the Secretary's determination to take it into account as "income" for the purpose of evaluating the recipients' need for further assistance under the Food Stamp Act accordingly is reasonable.[14]

The fact that the allowance is made available to cover incidental training expenses does not affect that conclusion. In the first place, an individual may receive the allowance without incurring any incidental training expenses. In that case the allowance effects an increase in the absolute amount of income the household has available for its usual expenses. Inclusion of the allowance in income in such circumstances is plainly appropriate.

Inclusion is just as appropriate when the allowance is used for expenses which are "incident" to the training program but which the household previously had been incurring without assistance. Meals purchased at

[14] Under the Secretary's regulations the allowance for tuition is also included in income. See 7 C.F.R. 271.3(c)(1)(i)(*f*), (*g*), and (*j*). But, since the cost of tuition is a deductible expense (7 C.F.R. 271.3(c)(1)(iii)(*f*)), such an allowance does not result in a net increase in income under the Act.

the trainee's place of instruction, for example, replace meals consumed at home or at work. Similarly, commutation expenses incurred incident to the training program may replace expenses theretofore incurred in commuting to work or in traveling for other purposes. The receipt of an allowance to defray such ordinary living expenses frees a like amount of the household's income for other expenses.

The allowance is properly included in income, moreover, even if it is used to defray new incidental expenses incurred in connection with the training program. Such expenses otherwise would have to be met out of other income or resources. Inclusion of the allowance in income gives appropriate recognition to the fact that households whose incidental training expenses are defrayed by an allowance are better off, by the amount of the allowance, than those whose expenses are not so defrayed.

The Secretary's regulation requiring inclusion of public assistance, including the kind of allowance received by appellee Hein here, thus advances the food stamp program toward the appropriate objective that "benefit distribution should be 'horizontally' equitable so that households in equal financial situations receive equal benefits." *Resolution 58 Report, supra,* at 87. Excluding such an allowance from income, as appellee would have this Court require of the Secretary, would have the improper consequence of favoring public assistance recipients whose expenses are covered by an allowance over households that meet similar ex-

penses out of earned income. Cf. *Resolution 58 Report, supra,* at 16.

It is illustrative to compare the situation here with the Secretary's similar treatment of governmental assistance payments made on behalf of a household to third parties. Under Section 101, Housing and Urban Development Act of 1965, 79 Stat. 451, as amended, 12 U.S.C. 1701s, for example, the Secretary of Housing and Urban Development is authorized to pay a rent supplement on behalf of low-income families. Such assistance increases the family's income, although it may or may not affect its "food purchasing power." If the family uses the assistance to reduce its rental costs, that part of the family's income no longer needed for rent will represent an increase in the amount of income which is available for other expenses, including food. If, on the other hand, the family uses the assistance to rent a better house, the amount of income available for food is not increased. In either event, the rent supplement is properly included in income for purposes of the Food Stamp Act. 7 C.F.R. 271.3(c)(1)(i)(*f*) and (*h*). In sustaining the correctness of this regulation, the Court of Appeals for the Sixth Circuit observed (*Compton* v. *Tennessee Department of Public Welfare,* 532 F. 2d 561, 565):

> We * * * recognize * * * that the Secretary's policy at first impression seems to penalize low-income families with a forced choice between decent housing and food. It is evident though that the policy is not an illusory choice between food and housing, but rather a means of equalization between those whose housing costs are partially defrayed and those families who alone must bear the full burden of housing.

A similar analysis is appropriate here. An allowance for incidental training expenses may or may not enlarge the absolute amount of household income available for food. But, in either event, by helping to defray expenses which otherwise would have to be defrayed from other income, the allowance places the recipient in a better position on a comparative income scale than if he or she did not receive the allowance, and, thus, such assistance is a relevant factor in evaluating the recipient's need for further benefits under the Food Stamp Act.[15]

2. The disallowance of an itemized deduction for incidental training expenses is also reasonable

Although the district court's remedial order barred the Secretary from including the $44 monthly allow-

[15] Appellee suggests (Mot. to Aff. 7 n. 6) that the Secretary's inclusion of the training allowance in income causes the Food Stamp Act to work at cross purposes with the federally aided state program. It is true that, in obtaining eligibility for both food stamp and training assistance, appellee received an amount which, although greater than that to which she would be entitled from either program individually, was less than she would have received had neither program been designed to take account of the other. But that does not make the Secretary's regulation unreasonable. As we have explained (pages 19–21, *supra*), Congress intended as a general matter that the Secretary would take account of other assistance payments in evaluating a household's need for food stamps. There are exceptions to this rule where Congress has specifically provided that a certain type of payment not be counted as income (see page 21, *supra*). Assistance payments received from federally aided state training programs are not within any of those exceptions.

ance in income unless a fully offsetting deduction were allowed (J.S. App. B, pp. 24a–25a), the court did not hold the regulation pertaining to inclusion invalid. The focus of the district court's analysis appeared to be upon the Secretary's disallowance of an itemized deduction for incidental training expenses, and only the regulations disallowing such a deduction —7 C.F.R. 271.3(c)(1)(iii)(*f*) and the comparable state regulations—were expressly invalidated (402 F. Supp. at 405; J.S. App. A, p. 15a). We have just demonstrated that the inclusion of the allowance in income is reasonable. As we now show, disallowance of an itemized deduction also is reasonable.

a. The district court held that a deduction must be allowed for training travel, or commutation, expenses, because the amounts so expended are unavailable for the purchase of food, *i.e.*, because such expenses "decrease * * * food purchasing power" and "reduce the level of actually available income" (402 F. Supp. at 405; J.S. App. A, p. 15a). As we have already explained (pages 15–17, *supra*), that holding is based upon a misperception concerning the eligibility criterion under the Act, and upon reasoning that would appear to require the Secretary to allow an itemized deduction from gross income for all, or at least a very wide variety of, other nonfood expenses. That result plainly was not within the contemplation of Congress.

To the contrary, Congress understood and intended that a household's "income," as determined by the Secretary, would include amounts needed for nonfood items. In 7 U.S.C. 2016(b), Congress provided that

"households shall be charged for the coupon allotment issued to them, and the amount of such charge shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income." As former Secretary of Agriculture Clifford M. Hardin explained, the 30 percent limitation was included to prevent hardship, "in view of [the household's] other needs." Hearings on the President's Message on Hunger and Malnutrition and S. 6, S. 339, S. 1608, S. 1864, and S. 2014 (Food Stamp Program and Commodity Distribution) before the Senate Committee on Agriculture and Forestry, 91st Cong., 1st Sess. 389 (1969). Those "other needs" are the nonfood items that a family normally requires. Congress limited the maximum expenditure that would be required of a family for food, so that the household could meet its nonfood expenses out of the "income" figure which the Secretary uses to evaluate need for food stamp assistance.

Contrary to the analysis of the district court, therefore, it is not improper for the Secretary to disallow specific nonfood expenses as itemized deductions from income. Moreover, the Secretary's regulations, which provide for but a few itemized deductions,[16] are all the more reasonable when viewed in light of the Secre-

[16] See 7 C.F.R. 271.3(c)(1)(iii). Under the Secretary's regulations, ordinary living expenses are not generally deductible. Deductions are allowed, however, for the amount by which shelter costs exceed 30 percent of gross income (7 C.F.R. 271.3(c)(1)(iii)(*h*)), and for "[u]nusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household." 7 C.F.R. 271.3(c)(1)(iii)(*e*). See also note 3, *supra*.

tary's finding that deductions tend to benefit households with higher incomes (*Resolution 58 Report, supra,* at 26):

> Allowing participants to deduct certain expenditures in unlimited amounts results in higher income households, who have more money to spend for deductible items, receiving disproportionately large bonuses in comparison with lower income households who cannot afford large deductible expenditures. It is these itemized deductions that allow households with adequate incomes to become eligible since their net income after deductions may be considerably less than their actual gross income.

Disallowance of deductions for nonfood expenses thus helps to avoid what otherwise might be an allocation of assistance to higher-income households, possibly at the cost of reducing the amount of relief otherwise available to poorer households.

b. Although the Secretary allows a standard, nonitemized deduction for incidental expenses under some circumstances (see 7 C.F.R. 271.3(c)(1)(iii)(*a*)), he has determined to disallow an itemized deduction for commutation expenses, whether incurred by a trainee or by one who commutes to work. The disallowance of commutation expenses as an itemized deduction is of course supported by the considerations underlying the disallowance of nonfood expenses generally.

Commutation expenses could reasonably be anticipated to vary widely among households, depending on factors, such as personal consumption choices, that should not affect the amount of federal food stamp

assistance that the household is eligible to receive. The amount of commutation expenses actually incurred by an individual depends on the method of transportation utilized and the distance traveled. Both of these factors are to a large extent matters of personal choice. For example, one individual may choose to travel in his own private automobile, while another may choose instead less expensive forms of commutation, such as by carpool or public transportation. Similarly, one individual, like appellee Hein (Mot. to Aff. 2), may live far from work or school, and therefore require a larger expenditure for traveling than another who lives closer. The Secretary's regulation disallowing an itemized deduction properly avoids having a household's eligibility for food stamp assistance turn upon such factors.

Instead, the Secretary has determined to allow a standard, nonitemized deduction from income received in connection with work and training. 7 C.F.R. 271.3(c)(1)(iii)(*a*). This standardized deduction gives some recognition to the fact that work or school may entail additional nonfood expenses, and thereby gives encouragement to employment and training, without allowing personal consumption choices to govern the allocation of food stamp benefits.

The rationale for the Secretary's decision to disallow an itemized deduction for commutation expenses, and to permit only a standard deduction, applies equally to individuals who, like appellee Hein, receive an allowance that may be used to defray such expenses. To allow these individuals an itemized de-

duction in excess of the standard deduction would be unfair to those trainees and wage-earners who must cover similar commutation expenses out of other sources of income.

c. Finally, the disallowance of an itemized deduction for training transportation expenses is neither arbitrary nor contrary to a congressional intention to encourage education.

It was not arbitrary for the Secretary to allow a deduction for direct educational or training expenses, *i.e.*, "[t]uition and mandatory fees assessed by educational institutions" (7 C.F.R. 271.3(c)(1)(iii)(*f*)), and at the same time to disallow an itemized deduction for commutation expenses incurred in connection with training. Cf. *Commissioner* v. *Flowers,* 326 U.S. 465 (holding that work commutation expenses, unlike business expenses, are not deductible for federal income tax purposes). Tuition and other mandatory fees generally represent fixed amounts which, unlike commutation expenses, do not vary because of the subjective preference of the student. Moreover, tuition and related fees represent substantial expenditures that have no counterpart in the budgets of the normal household. The same is not true for commutation expenses. Unlike tuition fees, which are, of course, peculiarly associated with education, commutation expenses are also incurred in the pursuit of other endeavors. Thus, it is not appropriate to allow an itemized deduction for tuition to those households incurring such expense, while affording to all households only a standard deduction to cover incidental expenses.

The disallowance of an itemized deduction for incidental expenses is not contrary to a congressional intention to encourage education. In the first place, there is no evidence that Congress had any such intention in mind at the time the Food Stamp Act was adopted. See *Chek* v. *Butz,* No. C–75–0559-CBR, decided June 4, 1975 (N.D. Cal.); *Stewart* v. *Butz,* 356 F. Supp. 1345 (W.D. Ky.), affirmed *per curiam,* 491 F. 2d 165 (C.A. 6). The Act's purposes are to help low-income households purchase a nutritionally adequate diet and to strengthen the agricultural economy. 7 U.S.C. 2011. The provision for students in 7 U.S.C. (Supp. V) 2014(c), which the district court construed as indicative of a specific intention to grant special benefits to students as a class (402 F. Supp. at 405; J.S. App. A, p. 15a), is merely an exemption from the general requirement that able-bodied adults register for work as a prerequisite to eligibility for food stamps. The proviso does not encourage individuals to attend school rather than work; the Act is neutral as between employment and education.

To the extent, however, that the Act's exemption of students from the registration requirement evidences Congress' intention not to discourage education and training, the deduction for tuition and fees, together with the statutory exemption itself, is more than sufficient to carry out that purpose. The Secretary could reasonably anticipate that, to the extent they were incurred at all, commutation expenses would ordinarily be a relatively insignificant part of the total cost of education, and he correctly determined that

the Act does not require the allowance to students of a special itemized deduction for such expenses."[17]

B. THE SECRETARY'S REGULATIONS DO NOT DENY EQUAL PROTECTION OR DUE PROCESS

For reasons which are explicit or implicit in what already has been said, the regulatory provisions at issue here are plainly constitutional.

1. The Secretary's regulations do not violate the principles of equal protection that inhere in the Due Process Clause of the Fifth Amendment. Inclusion of training allowances in income, and disallowance of an itemized deduction for commutation expenses, provides a reasonable and economically sound standard for allocating food stamp benefits. Such regulations thus satisfy constitutional as well as statutory requirements. See *Weinberger* v. *Salfi*, 422 U.S. 749; *Jefferson* v. *Hackney*, 406 U.S. 535; *Dandridge* v. *Williams*, 397 U.S. 471.

In holding to the contrary, the district court reasoned that the regulations drew "an arbitrary distinction between those food stamp recipients who receive such travel allowances and those who do not, "even though both classes are similarly situated in

[17] The disallowance of an itemized deduction for training transportation expenses here is not contrary to *Shea* v. *Vialpando*, 416 U.S. 251. In that case, Section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), specifically required that "any expenses reasonably attributable to the earning of * * * income" be taken into consideration in administering aid to families with dependent children; the Court concluded that that statute barred the use of standardized deductions for such expenditures. The Food Stamp Act contains no comparable requirement.

terms of disposable income and purchasing power" (402 F. Supp. at 405–406; J.S. App. A, p. 16a). But in concluding that individuals who receive training allowances have the same disposable income as those who do not, the court erroneously assumed that those who receive allowances always spend the entire allowance to defray training expenses, and that those who do not receive allowances do not incur such expenses. As we have explained (pages 14–15, *supra*), the training allowance need not be used entirely for travel or other incidental training expenses. Moreover, many individuals who do not receive such an allowance nevertheless incur travel or other incidental expenses, whether for a training program or for work, that must be defrayed from other sources of income. Thus the basic factual predicate upon which the district court's constitutional holding rested was unsound: those "who receive * * * travel allowances and those who do not" cannot be assumed to be "similarly situated in terms of disposable income * * *."

Because the district court failed to consider that class of individuals who do not receive a training allowance but do incur incidental training or other similar expenses, the court devised a solution that does not conform as closely to the ideal of equal treatment as do the Secretary's regulations. The regulations requiring training allowances to be included in income, and disallowing an itemized deduction for training expenses, reflect the real difference in need levels between households whose training expenses are de-

frayed by such allowances and those whose training expenses are not so defrayed. The former households are better off, by the amount of their allowances, and the Secretary's regulations realistically take account of this fact. The district court's order, on the other hand, ignores the real difference in economic well-being between such households. That order, by requiring the Secretary to permit those households that receive the allowance to exclude it from their income,[18] irrationally favors households that receive an allowance over those that do not.

Different but equally serious problems of equity would attend the district court's holding even if it could be read broadly as requiring the Secretary to allow an itemized deduction for training transportation expenses without regard to whether such expenses are defrayed by an allowance. All other things being equal, allowance of such a deduction might achieve equity between households that incur incidental training expenses. But the allowance of an itemized deduction only for training transportation expenses would unduly favor such households over other households that incur similar commutation expenses, but in connection with work rather than training. That disparity of treatment would have no apparent justification under the Food Stamp Act, and it is not required by principles of equal protection.

[18] Technically, the Secretary is given a choice between excluding the allowance and allowing a completely offsetting deduction (J.S. App. B, p. 25a):
"[The Secretary is] permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's net monthly income in determining such person's adjusted gross income."

Nor should the Secretary be required to allow an all households insofar as the treatment of that narrow itemized deduction for all commutation expenses, merely in order to achieve maximum parity between class of expenses is concerned. Such a deduction would favor households that allocate—in many cases by choice rather than by necessity (see page 29, *supra*)—a relatively high proportion of their non-food expenditures to commutation, over those that incur lesser or no commutation expenses. That result is not required by the Food Stamp Act and would not conduce to greater fairness, equality of treatment, or rationality in the allocation of benefits.

Perfect equality of treatment is elusive and almost certainly unobtainable. The district court's insistence upon the primacy of "food purchasing power," taken to its logical extreme, would require the allowance of an itemized deduction for all expenditures for non-food items. But the Secretary has properly rejected that approach as contrary to the clear intent and understanding of Congress (see pages 15–17, 26–28, *supra*), and the principles of equal protection do not require otherwise. Food stamps benefits, like many other forms of public assistance, are appropriately and constitutionally allocated on the basis of the in-

dividual's or household's "income." [19] Thus, any definition of "income" otherwise sustainable as reasonable under the Food Stamp Act affords a sufficiently rational basis for the allocation of benefits to satisfy the requirements of equal protection. We have shown above (pages 17–32, *supra*) that the Secretary's regulations defining "income" are reasonable. By applying these regulations evenly to all households, the Secretary is able fairly and with reasonable accuracy to determine the comparative need of each household for food stamp assistance. This result satisfies the requirements of equal protection.

2. The Secretary's regulations do not deny due process by establishing an irrebuttable presumption. The district court's holding to the contrary is based upon the fact that those regulations "provide no safeguards

[19] For example, in addition to the food stamp program, the following benefits are allocated on the basis of, or with regard to, household or individual income: aid and services to needy families with dependent children (AFDC), Title IV of the Social Security Act, as amended, 42 U.S.C. (and Supp. IV) 601 *et seq.*; federal old-age, survivors, and disability insurance benefits, Title II of the Social Security Act, as amended, 42 U.S.C. (and Supp. IV) 401 *et seq.*;grants to states for medical assistance programs (medicaid), Title XIX of the Social Security Act, as amended, 42 U.S.C. (and Supp. IV) 1396 *et seq.*; grants to states for social services, Title XX of the Social Security Act, 42 U.S.C. (Supp. IV) 1397 *et seq.*; grants for family planning service projects, Title X of the Public Health Service Act, 84 Stat. 1506, as added and amended, 42 U.S.C. (and Supp. IV) 300a *et seq.*

This Court has never questioned the propriety of allocating such benefits on the basis of or with regard to income. Cf. *Jefferson* v. *Hackney*, *supra*; *Dandridge* v. *Williams*, *supra*; *Shea* v. *Vialpando*, *supra*; *Rosado* v. *Wyman*, 397 U.S. 397.

for individual consideration of what effect the travel allowance actually has on an individual's ability to purchase a nutritionally adequate diet" (402 F. Supp. at 407; J.S. App. A, p. 20a). In so reasoning, the court apparently again proceeded upon the belief that "income" is an inadequate measure of a household's need for food stamp assistance and that an individualized determination of "ability to purchase a nutritionally adequate diet" is constitutionally necessary. It is certainly true that two households with the same income may incur different nonfood expenses, and therefore have different amounts available for the purchase of food. But "income" is an easily administered standard that permits roughly accurate comparisons of the relative needs of large numbers of households. The social cost that would be entailed by a more precise measure of actual need—the administrative cost involved in obtaining and verifying the detailed expenses of each recipient household, and the burden imposed on the households themselves—would probably significantly outweigh the benefit of marginally enhanced accuracy in the assessment of true relative need. Thus "income" is an appropriate measure of need and, as we have shown (pages 17–32, *supra*), the Secretary's regulations provide a reasonable definition of "income."

In the circumstances of this case, the Due Process Clause requires no more. The "conclusive presumption" (402 F. Supp. at 407; J.S. App. A, p. 20a) anal-

ysis upon which the district court relied is inapplicable to statutory schemes creating "noncontractual claim[s] to receive funds from the public treasury * * *." *Weinberger* v. *Salfi, supra,* 422 U.S. at 772. Although one may hypothesize individual situations in which the calculation of "income" under the Secretary's regulations does not precisely reflect a household's relative need for food stamp assistance, there is no constitutional justification for subjecting the regulations to the standard of universal truth required of irrebuttable evidentiary presumptions. See *Weinberger* v. *Salfi, supra.* See generally Note, *The Irrebuttable Presumption Doctrine in the Supreme Court,* 87 Harv. L. Rev. 1534 (1974). Individualized determinations of "ability to purchase a nutritionally adequate diet," more subtle or refined than determinations of "income," are not constitutionally required. A statutory or regulatory classification, "though [it] may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, [is] permissible under the Fifth Amendment * * *." *Mathews* v. *Lucas,* No. 75–88, decided June 29, 1976, slip op. 13–14. The statutory eligibility criterion of "income" provides a generally accurate determination of household need; the Secretary's regulations reasonably define "income." Those regulations therefore give effect to the statutorily prescribed eligibility criterion in a constitutionally permissible manner.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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APPENDIX

Food Stamp Act of 1964, 78 Stat. 703 *et seq.*, as amended, 7 U.S.C. (and Supp. V) 2011 *et seq.*:

7 U.S.C. 2011 provides:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distributing of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.

7 U.S.C. 2013 provides in pertinent part:

> (a) The Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the State shall be provided with an opportunity to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a

greater monetary value than the charge to be paid for such allotment by eligible households. The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

* * * * *

(c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

7 U.S.C. (Supp. V) 2014 provides in pertinent part:

(b) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility * * *.

(c) Notwithstanding any other provisions of law, the Secretary shall include in the uniform national standards of eligibility to be prescribed under subsection (b) of this section a provision that each State agency shall provide that a household shall not be eligible for assistance under this chapter if it includes an able-bodied adult person between the ages of eighteen and sixty-five (except mothers or other members of the household who have the responsibility of care of dependent children or of incapacitated adults, bona fide students in any accredited school or training program, or persons employed and working at least 30 hours per week) who either (a) fails to register for employment at a State or Federal employment office or, when impractical, at such other appropriate State or Federal office designated by the Secretary, or (b) has refused to accept employment or public work * * *.

7 U.S.C. (and Supp. V) 2016 provides in pertinent part:

(a) The face value of the coupon allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be in such amount as the Secretary determines to be the cost of a nutritionally adequate diet, adjusted semiannually by the nearest dollar increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics in the Department of Labor to be implemented commencing with the allotments of January 1, 1974, incorporating the changes in the prices of food through August 31, 1973, but in no event shall such adjustments be made for households of a given size unless the increase in the face value of the coupon allotment for such households, as calculated above, is a minimum of $2.00.

(b) Notwithstanding any other provision of law, households shall be charged for the coupon allotment issued to them, and the amount of such charge shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income: *Provided,* That coupon allotments may be issued without charge to households with income of less than $30 per month for a family of four under standards of eligibility prescribed by the Secretary: *Provided*

further, That the Secretary shall provide a reasonable opportunity for any eligible household to elect to be issued a coupon allotment having a face value which is less than the face value of the coupon allotment authorized to be issued to them under subsection (a) of this section. The charge to be paid by eligible households electing to exercise the option set forth in this subsection shall be an amount which bears the same ratio to the amount which would have been charged under subsection (b) of this section as the face value of the coupon allotment actually issued to them bears to the face value of the coupon allotment that would have been issued to them under subsection (a) of this section.

Regulations of the Department of Agriculture on the Food Stamp Program:

7 C.F.R. 271.3 provides in pertinent part:

(c) *Income and resource eligibility standards of other households.* Each State agency shall apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

(1) *Definition of income.* (i) Monthly income means all income which is received or anticipated to be received during the month. To compute maximum monthly income for purposes of determining eligibility, income shall mean any of the following but is not limited to:

(*a*) All compensation for services performed as an employee;

(*b*) Net income from self-employment, which shall be the total gross income from such enterprise (including the total gain received from the sale of any capital goods or equipment related to such enterprise), less the cost of producing that income. The following shall not be considered as the cost of producing income:

(*1*) Payments on the principal of the purchase cost of income-producing real estate. Any payments of principal, interest, and taxes on the home shall be subject to paragraph (c)(1)(iii)(*h*) of this section;

(*2*) Payments on the principal of the purchase cost of capital assets, equipment, machinery, and other goods;

(*3*) Depreciation; and

(*4*) A net loss sustained in any previous period;

(*c*) The total amount of a roomer's payment to the household;

(*d*) The total payment received from each boarder less a deduction for each boarder of the value of the monthly coupon allotment for a one-person household;

(*e*) Payments received as an annuity; pension; retirement or disability benefit; veterans', workmen's or unemployment compensation; and old-age, survivors, or strike benefit;

(*f*) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(*g*) Payments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program;

(*h*) Payments, except those for medical costs, made on behalf of the household by a person other than a member of the household;

(*i*) Cash gifts or awards (except as provided in paragraph (c)(1)(ii)(*e*) of this section) for support, maintenance, or the expenses of education.

(*j*) Scholarships, educational grants (including loans on which repayment is deferred until

completion of the recipient's education), fellowships, and veteran's educational benefits;

(*k*) Support and alimony payments;

(*l*) Rents, dividends, interest, royalties, and all other payments from any source whatever which may be construed to be a gain or benefit; and

(*m*) The actual value of housing received from an employer by members of a household as income in kind, in lieu of or supplemental to household income, not to exceed $25 per month. No value is to be assigned to housing received as payment in kind which has been condemned or declared substandard under Federal, State, or local housing codes.

(ii) The following shall not be considered income to the household (this list is inclusive and no other exclusions from income shall be allowed):

(*a*) Income received as compensation for services performed as an employee or income from self-employment by a child residing with the household who is a student and who has not attained his eighteenth birthday.

(*b*) Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(*c*) Any gain or benefit which is not in money (except as provided in paragraph (c)(1)(i)(*m*) of this section);

(*d*) That income of a household in a quarter which is received too infrequently or irregularly to be reasonably anticipated: *Provided,* That such infrequent or irregular income of all household members does not exceed $30 in the quarter;

(*e*) Monies received from insurance settlements, sale of property (except for property related to self-employment provided for in subdivision (c)(1)(i)(b) of this section), cash prizes, awards, and gifts, inheritances, retroactive lump-sum Social Security or Railroad Retirement pension payments, income tax refunds and similar nonrecurring lump-sum payments;

(*f*) All loans, except loans on which repayment is deferred until completion of the recipient's education;

(*g*) Income received by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the 1973 amendments to the Older Americans Act of 1965, Public Law 93–29 (87 Stat. 30); and

(*h*) Payments received under the WIC (Women, Infants and Children) Program.

(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other deductions from income shall be allowed):

(*a*) Ten per centum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month. This deduction shall be made before the following deductions.

(*b*) Mandatory deductions from earned income which are not elective at the option of the employee such as local, State, and Federal income taxes, Social Security taxes under FICA, and union dues;

(*c*) Payments for medical expenses, exclusive of special diets, when the costs exceed $10 per month per household;

(*d*) The payments necessary for the care of a child or other persons when necessary for a household member to accept or continue employment, or training or education which is preparatory for employment;

(*e*) Unusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household;

(*f*) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation);

(*g*) Court-ordered support and alimony payments; and

(*h*) Shelter costs in excess of 30 per centum of the household's income after the above deductions. The State agency may develop, subject to FNS approval, standard utility allowances for use in calculating shelter costs: *Provided,* That the State agency must use actual utility costs if the household so requests and can verify such costs; and *Provided further,* That the State agrees to make annual reviews and adjust the standard, as necessary, to reflect deviations revealed by quality control, State agency surveys of utility company rates, or any other methods developed by the State and approved by FNS.

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